



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB047]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Navy Target and Missile Launch Activities on San Nicolas Island

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed issuance of an incidental harassment authorization; request for comments.

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for an incidental harassment authorization (IHA) to incidentally take marine mammals, by Level B harassment only, during target and missile launch activities on San Nicolas Island (SNI). The Navy is requesting, and NMFS is proposing to issue, an IHA authorizing incidental take of marine mammals during continuation of target and missile launch activities identical to those already analyzed in a 2019 IHA issued on June 12, 2019 and a currently active Renewal IHA issued on June 19, 2020, which expires on June 11, 2021. The proposed mitigation, monitoring, and reporting measures remain the same as prescribed in the previous IHAs. This IHA would be effective from June 12, 2021 through June 11, 2022. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notification of our decision. The Navy's activities are

considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the* **FEDERAL REGISTER**].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.egger@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On March 1, 2021, NMFS received an adequate and complete application from the Navy, requesting the take of marine mammals incidental to target and missile launch activities on SNI. NMFS previously issued an IHA for this activity on June 12, 2019 (84 FR 28462; June 19, 2019) as well as a Renewal IHA on June 19, 2020 (85 FR 38863; June 29, 2020). The activities for which incidental take is requested are identical to those covered under the previous IHAs.

Navy complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous authorizations and information regarding their monitoring results may be found in the **Potential Effects of Specified Activity on Marine Mammals and their Habitat and Estimated Take** section of the previous authorization (84 FR 28462; June 19, 2019) as well <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities#active->

authorizations. This proposed IHA would cover one year of an on-going activity for which Navy obtained prior authorizations, specifically continuation of target and missile launches on SNI. Of note, the Navy also submitted a revised and complete application on August 28, 2020 for a 7-year rulemaking and Letter of Authorization (LOA) for the same target and missile launch activities on SNI, as well as other Navy testing and training activities in the same area. On September 4, 2020, NMFS published a notice of receipt of application in the **Federal Register** (85 FR 55257) requesting comments and information related to the Navy's request. However, NMFS is unable to make determinations regarding the requested LOA prior to the expiration of the currently active Renewal IHA, which would leave a lapse in coverage for the Navy for target and missile launch activities on SNI after it expires on June 11, 2021. This IHA is intended to provide coverage during this period and would be valid for one year from issuance.

Description of the Proposed Activity and Anticipated Impacts

The Navy proposes to continue a target and missile launch program on SNI, located in Southern California and part of the Channel Islands, which is identical to the program covered under the previous authorizations. The Navy has been conducting this program since 2001, which supports testing and training activities associated with operations on the Point Mugu Sea Range (PMSR). The PMSR is used by the U.S. and allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile, while others involve the launch of multiple missiles in quick succession and are launched from two launch sites on SNI. As before, the Navy proposes to conduct up to 40 missile launch events from SNI, but the total may be less than 40 depending on operational requirements. Launch timing will be determined by operational,

meteorological, and logistical factors. Up to 10 of the 40 launches may occur at night, but this is also dependent on operational requirements and only conducted when required by test objectives. The specified activities are expected to result in the take of three marine mammal species: California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) by Level B harassment, primarily in the form of behavioral disturbance, as a result of the airborne noise produced during launch activities.

To support public review and comment on the IHA that NMFS is proposing to issue here, we refer the reader to the documents related to the previously issued IHAs (84 FR 28462; June 19, 2019 and 85 FR 38863; June 29, 2020) and discuss any new or changed information here. A detailed description of the proposed target and missile launch activities can be found in these documents. We also refer the reader to the Navy's current and previous applications and monitoring reports which can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities#active-authorizations>.

Detailed Description of the Action

A detailed description of the proposed target and missile launch activities is found in these previous documents. The location, timing, and nature of the activities, including the types of missiles planned for use, are identical to those described in the previous notifications.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this proposed IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the previous authorizations.

NMFS has also reviewed the Navy's monitoring reports and they support the current take estimates and our findings. Therefore, no change in the take estimates is warranted.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHAs, which remains applicable to the issuance of this proposed IHA. There is no new information on potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the proposed IHA are identical to those used in the previous IHAs. The source levels, number of launches, and the marine mammal abundance on SNI used to calculate take remain unchanged from the previously issued IHAs. Regarding proposed authorized take, the stocks taken, types of take, and methods of taking remain unchanged from the previously issued IHAs. The same is true for the number of takes, which are indicated below in Table 1. As before, no serious injury or mortality is anticipated to result from the Navy's activity.

Table 1--Requested Take Amount, Per Species, Relative to Population Size

Species	Authorized Level B harassment	Stock Abundance (percent taken by Level B harassment)
California sea lion	11,000	257,606 (4.27 percent)
Harbor seal	480	30,968 (less than 2 percent)
Northern elephant seal	40	179,000 (less than 1 percent)

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures proposed here are identical to those included in the previous IHAs. The discussion of the least practicable adverse impact included in that document remains accurate. All mitigation, monitoring,

and reporting measures in the previous IHA are carried over to this proposed IHA and summarized below:

- *Personnel Mitigation* - Personnel will not enter pinniped haulouts. Personnel will be adjacent to pinniped haulouts below the predicted missile path for two hours prior to a launch only for monitoring purposes.
- *Launch Mitigation* - Missiles will not cross over pinniped haulouts at elevations less than 305 m (1,000 ft). Launches at night will be limited. Launches will be avoided during harbor seal pupping season (February through April) unless constrained by mission objectives. Launches will be limited during the pupping season for northern elephant seal (January through February) and California sea lion (June through July) unless constrained by mission objectives or certain other factors. It is vital that the Navy effectively executes readiness activities to ensure naval forces can effectively execute military operations.
- *Aircraft Operation Mitigation* - All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries), except in emergencies.
- *Non-authorized Take Prohibited* - If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, the Navy must consult with NMFS before the next launch event.
- *Visual and Video Camera Monitoring* - The Navy proposes to conduct marine mammal monitoring during launches from SNI, using visual monitoring as well as simultaneous autonomous audio recording of launch sounds and video recording of pinniped behavior. Visual monitoring, before and after launches, is a scan of the haulout beaches to count pinnipeds over a wider field of view than can be captured by a stationary video camera. This is typically done over a 15-30 minute

period. Visual monitoring is conducted while the equipment is being set up and broken down for video and acoustic monitoring. Video monitoring is conducted by recording continuously from a minimum of two hours before the event to approximately one hour after the event. These video and audio records will be used to document pinniped responses to the launches.

- *Acoustic Monitoring* - Acoustical recordings will be obtained during each monitored launch. These recordings will be suitable for quantitative analysis of the levels and characteristics of the received launch sounds.
- *Reporting* - A technical report will be submitted to the NMFS' Office of Protected Resources within 90 days from the date the IHA expires. This report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches activities at SNI that are covered under this IHA.

Preliminary Determinations

The Navy proposes target and missile launch activities identical to those covered in the previous IHAs. The methods of taking and effects of the action resulting in Level B harassment only remains the same as what was previously analyzed. When issuing the previous IHAs, NMFS found the Navy's target and missile launch activities would have a negligible impact to species or stocks' rates of recruitment and survival. This proposed IHA also carries over identical required mitigation, monitoring, and reporting measures as required under the previous IHAs. NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the previous IHAs. Based on the analysis in the previous IHAs, the likely effects of the specified activity on marine mammals and their habitat, as well as the previous monitoring results at SNI, NMFS likewise finds that the total marine mammal take from this proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; and (3) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (4) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, formal consultation under section 7 of the ESA was not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for conducting target and missile launches on SNI, effective from June 12, 2021 through June 11, 2022, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the previous IHAs), the proposed authorization, and

any other aspect of this notice of proposed IHA for the proposed target and missile launch activities on SNI. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: April 29, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

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